

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

**January 1, 2011 Workers' Compensation Claims Cost Benchmark
and Pure Premium Rates**

File No. REG-2010-00014

Notice Date: August 26, 2010

Approval of the Workers' Compensation Claims Cost Benchmark and Advisory Pure Premium Rates and proposed revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks; Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates to be effective January 1, 2011, unless otherwise noted.

NOTICE AND SUBJECT OF PUBLIC HEARING

Notice is hereby given that the Insurance Commissioner will hold a public hearing in response to a filing, submitted on August 18, 2010, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB") to consider the following:

- Approval of the Workers' Compensation Claims Cost Benchmark and advisory pure premium rates developed by the WCIRB as a rating organization on behalf of its member insurers.
- Approval of amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 ("USRP") as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.
- Approval of an amendment to the Miscellaneous Regulations for the Recording and Reporting of Data as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.
- Approval of amendments to the California Workers' Compensation Experience Rating Plan—1995 ("ERP") as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

**October 12, 2010 – 1:00 PM
California Department of Insurance
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California**

AUTHORITY AND REFERENCE

Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules, or USRP, are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations, or ERP, are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations are promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

Workers' Compensation Claims Cost Benchmark and Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for each employee classification on behalf of its member insurers for submission to the Insurance Commissioner for issuance or approval. The WCIRB also submits an overall rate adjustment that measures the change in costs to the California worker's compensation system, designated by the Commissioner as the Workers' Compensation Claims Cost Benchmark, in addition to the changes to the pure premium rates for each classification.

The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the Insurance Commissioner to require insurers to use the Claims Cost Benchmark or pure premium rates issued or approved by the Insurance Commissioner. Accordingly, the Claims Cost Benchmark and pure premium rates issued or approved by the Insurance Commissioner are an estimate of the workers' compensation claims costs and are advisory only. However, all insurers must submit their rates for review to the Insurance Commissioner prior to their use, and an insurer's filed workers' compensation rates are public information.

Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a) and 11750.3(c), a licensed rating organization may promulgate advisory plans in connection with pure premium rates and

the administration of classification and rating systems and present them to the Insurance Commissioner for review.

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734 and 11751.5, the Insurance Commissioner has designated the WCIRB as his statistical agent. As the designated statistical agent, the WCIRB has developed and submitted for the Insurance Commissioner's approval pure premium rates and revisions to the USRP, the Miscellaneous Regulations for the Recording and Reporting of Data, and ERP for approval. The pure premium rates will be advisory only; however, adherence to the regulations contained in the USRP, the Miscellaneous Regulations for the Recording and Reporting of Data, and the ERP is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the Insurance Commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the Insurance Commissioner 30 days prior to its use and is not disapproved by the Insurance Commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the USRP or the Standard Classification System developed by the WCIRB and approved by the Insurance Commissioner.

The pure premium rates recommended by the WCIRB to be effective January 1, 2011, as well as amendments to the USRP, the Miscellaneous Regulations for the Recording and Reporting of Data, and the ERP are detailed in the WCIRB's filing and summarized below.

APPROVE CLAIMS COST BENCHMARK AND PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the Insurance Commissioner to be effective January 1, 2011 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2011. The corresponding overall pure premium rate level change or claims cost benchmark is 29.6% greater than the current claims cost benchmark approved by the Insurance Commissioner.

The WCIRB will be reviewing accident year experience valued as of June 30, 2010 once it is received and, if appropriate, will amend the pure premium rates proposed in this filing. Similarly, if legislative or regulatory changes are adopted or judicial action is taken prior to the time of the scheduled CDI public hearing on this filing, the WCIRB will evaluate the estimated cost impact of these changes and, to the extent appropriate, modify the pure premium rates proposed in this filing and propose changes to the approved January 1, 2010 pure premium rates with respect to policies with anniversary rating dates on or after January 1, 2010 that are outstanding as of January 1, 2011.

The proposed pure premium rates are based on (a) insurer losses incurred during 2009 and prior accident years valued as of March 31, 2010; (b) insurer loss adjustment expenses for 2009 and prior years; (c) the experience rating off-balance correction factor; and (d) classification payroll and loss experience reported for policies issued during 2007 and prior years.

AMEND THE USRP TO BE EFFECTIVE JANUARY 1, 2011

The WCIRB recommends that the following revisions to the USRP become effective January 1, 2011 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2011.

- Amend the minimum and maximum annual payroll for executive officers, partners, individual employers, and members of a limited liability company to increase the maximum from \$97,500 to \$101,400 and the minimum from \$37,700 to \$39,000, as well as to other payroll limitations relevant to specific classifications (e.g., athletic teams, entertainment classifications, taxicabs, etc.), to reflect wage inflation since the last time these amounts were amended (2010).
- Amend the policy and unit statistical report filing requirements to provide insurers the option of using either the first or last period of coverage of a fixed-term policy as a short-term policy.
- Eliminate Classification 3807, *Automobile or Automobile Truck Radiator Mfg.*, and amend the footnote to Classification 3840, *Automobile, Automobile Truck or Motorcycle Parts Mfg. – N.O.C.*, to include automobile or automobile truck radiator manufacturing.
- Eliminate Classification 3300, *Bed Spring or Wire Mattresses Mfg.*, as it is no longer statistically credible.
- Amend Classification 8601(1), *Engineers – consulting – mechanical, civil, electrical and mining engineers and architects – not engaged in actual construction or operation*, to include outside salespersons and clerical office employees, and to clarify that land surveyors shall be separately classified under Classification 8602(1), *Land Surveyors – consulting – not engaged in actual construction or operation*. The WCIRB is gathering further information regarding the proposed changes to the standard classifications for (a) engineers, (b) land surveyors, (c) oil or gas geologists or scouts, and (d) geophysical exploration, and, if appropriate, the WCIRB will amend the January 1, 2011 pure premium rate filing.
- Amend Classification 2102, *Fruit or Vegetable Evaporation or Dehydrating*, to clarify that packing and handling of dried fruits shall be separately classified.
- Establish Classification 8602(1), *Land Surveyors – consulting – not engaged in actual construction or operation*, to encompass land surveying and timber cruising operations. The WCIRB is gathering further information regarding the proposed changes to the standard classifications for (a) engineers, (b) land surveyors, (c) oil or gas geologists or scouts, and (d) geophysical exploration, and, if appropriate, the WCIRB will amend the January 1, 2011 pure premium rate filing.

- Amend the footnote to Classification 2570, *Mattress or Box Springs Mfg. – including pillow, quilt or cushion manufacturing*, to state that bed spring and wire mattress manufacturing shall be classified as Classification 3257, *Wire Goods Mfg. – N.O.C.*
- Eliminate Classifications 8601(2), *Oil or Gas Geologists or Scouts*, and 8601(3), *Geophysical Exploration*, listed under the *Petroleum Industry Group*, and establish Classifications 8602(2), *Oil or Gas Geologists or Scouts*, and 8602(3), *Geophysical Exploration – including mapping of subsurface areas*, as alternate wording to proposed Classification 8602(1), *Land Surveyors – consulting – not engaged in actual construction or operation*. The WCIRB is gathering further information regarding the proposed changes to the standard classifications for (a) engineers, (b) land surveyors, (c) oil or gas geologists or scouts, and (d) geophysical exploration, and, if appropriate, the WCIRB will amend the January 1, 2011 pure premium rate filing.
- Amend the unit statistical reporting requirements for clarity and consistency and to conform to the Workers Compensation Insurance Organization’s *WCIO Workers Compensation Data Specifications Manual* for the electronic reporting of unit statistical report data, as applicable in California.
- Amend the unit statistical reporting requirements to eliminate the option of reporting individual closed claims on a grouped basis and to require the reporting of supplemental claim information on all temporary claims instead of only on temporary claims with incurred losses of more than \$5,000, effective on policies incepting on or after January 1, 2011.
- Amend for clarity and consistency.

AMEND THE USRP TO BE EFFECTIVE JANUARY 1, 2012

The WCIRB recommends that the following revisions to the USRP become effective January 1, 2012 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2012.

- Amend the Welfare Funds rule to provide that vacation and holiday pay are not subject to exclusion from reportable remuneration.
- Amend Appendix III, *Payroll/Remuneration Table*, to (1) revise the entry entitled *Prevailing Wage Laws, “Davis Bacon Act”*, to provide that vacation and holiday are not included among the fringe benefits that are excluded from reportable remuneration; and (2) revise the entry entitled *Vacation Pay*, to remove the references pertaining to “Davis-Bacon” and the USRP, *Standard Classification System*, Section V, *Payroll – Remuneration*, Rule 1, *Payroll – Remuneration*, Subrule o, *Welfare Funds*, to be effective January 1, 2012.

AMEND MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA

The WCIRB recommends that the following revisions to the Miscellaneous Regulations for the Recording and Reporting of Data become effective January 1, 2011 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2011:

- Amend Part 1, *General Provisions*, Section I, *Introduction*, Rule 2, *Effective Date*, to be consistent with the effective date of the USRP.

AMEND ERP TO BE EFFECTIVE JANUARY 1, 2011

The WCIRB recommends that the following revisions to the ERP become effective January 1, 2011 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2011.

- Amend Section III, *Eligibility and Experience Period*, Rule 1, *Eligibility Requirements for California Workers' Compensation Insurance*, to adjust the experience rating eligibility threshold from \$16,300 to \$21,700 to reflect wage inflation and the indicated change in the claims cost benchmark proposed in this filing.
- Amend Section V, *Application of Experience Modification*, Rule 5, *Notification of Experience Modification*, to provide that a risk is entitled to receive a copy of its Experience Rating Form free of charge from the WCIRB upon request.
- Amend the expected loss rates and D-ratios shown in Table II, *Expected Loss Rates and Full Coverage D-Ratios*, to reflect the most current data available.
- Amend for clarity and consistency.

AMEND ERP TO BE EFFECTIVE JANUARY 1, 2012

The WCIRB recommends that the following revisions to the ERP become effective January 1, 2012 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2012.

- Amend to present the experience rating formula in terms of primary and excess credibilities, rather than “B” and “W” values, in order to facilitate a better understanding of the experience rating process.
- Replace the values in Table III, *B and W Values*, with *Credibility Primary and Credibility Excess Values*, to conform to changes proposed elsewhere in this filing.
- Amend the *Experience Rating Form—California* to delete the existing forms and replace them with new forms to conform to changes proposed elsewhere in this filing.

WCIRB ADVISORY PLANS

CALIFORNIA RETROSPECTIVE RATING PLAN

The WCIRB has adopted the following revisions to the California Retrospective Rating Plan. The amendments will become effective January 1, 2011:

- Amended to reflect updated rating values and for clarity and consistency.

CALIFORNIA LARGE RISK DEDUCTIBLE PLAN

The WCIRB has adopted the following revisions to the California Large Risk Deductible Plan. The amendments will become effective January 1, 2011:

- Amended to reflect updated rating values and the current version of the Retrospective Premium Endorsement form as well as for clarity and consistency.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the USRP and ERP may result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold, the employer's actual claim experience, and if the employer has the various classifications that are affected by the proposed changes.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Insurance Commissioner cannot determine whether or not there will be a cost increase or savings to local agencies and school districts, but there will not be any new programs mandated on any local agencies or school districts as a result of the proposed regulations, if adopted as proposed herein. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, they may result in higher costs to local agencies or school districts insured for workers' compensation. The amendments to the USRP and ERP may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold, the employer's actual claim experience, and if the employer has the various classifications that are affected by the proposed changes.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner has determined that the proposed regulations may have a significant effect on small businesses. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the USRP and ERP may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold, the employer's actual claim experience, and if the employer has the various classifications that are affected by the proposed changes.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the Insurance Commissioner expects that the proposed regulations may have a significant effect on private persons or entities. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the USRP and ERP may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold, the employer's actual claim experience, and if the employer has the various classifications that are affected by the proposed changes.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attn: Christopher A. Citko
Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

(916) 492-3187
(916) 324-1883 (FAX)
citkoc@insurance.ca.gov

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address, FAX number, or email address listed above no later than 5:00 PM on Tuesday, October 19, 2010.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may be viewed or downloaded from the Regulatory Filings section of the WCIRB website (www.wcirbonline.org).

ACCESS TO RULE-MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to the WCIRB's filing, the statement of reasons

thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 AM and 5:00 PM, Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

Dated: August 26, 2010

STEVE POIZNER
Insurance Commissioner

By _____
Christopher A. Citko
Senior Staff Counsel